IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5477 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE P.B.MAJMUDAR

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

GUJARAT STATE ROAD TRANSPORT CORP.

Versus

KADRI MAHERALI AKBARALI SINCE DECEASED

Appearance:

1. Special Civil Application No. 5477 of 2002

MR ASHISH H SHAH for Petitioner No. 1

MR GK RATHOD for Respondent No. 1

NOTICE SERVED BY DS for Respondent No. 1

CORAM : MR.JUSTICE P.B.MAJMUDAR

Date of decision: 28/07/2003

ORAL JUDGEMENT

#. Rule. Mr.Rathod waives service of rule for the

respondent. With the consent of the parties, the matter is taken up for final hearing today.

#. By the impugned award, the Labour Court has come to the conclusion that the deceased employee remained absent on medical ground. The deceased employee was serving as a driver and during the pendency of the reference, unfortunately, he died on 14/5/1998. The deceased employee raised the aforesaid industrial dispute challenging his removal order. The deceased workman was removed from the service on the ground that he remained unauthorised absent for a long time and he had not submitted the report. It is required to be noted that, even the departmental inquiry was conducted against the workman ex parte since he could not remain present and as found by the Labour Court, in fact, he was bedridden because he was suffering from tuberculosis. The Labour Court has considered the said aspect after hearing the widow of the deceased employee by which she also pointed out that her husband has died because of tuberculosis. Even the death certificate of the deceased employee was produced before the Labour Court.

#. Considering the reasoning of the Labour Court, in my view, so far as the order of the Labour Court is concerned by which the Labour Court has stated that as such the deceased was required to be reinstated in service, but, since he has died, only monetary benefit can be given to the heirs of the deceased, is not required to be interfered with by this Court. However, in order to see that whatever amount is required to be given to the heirs of the deceased is expedited, the notice was issued. Mr.Rathod, who is appearing for the heirs of the deceased employee, has submitted that, he has no objection if, instead of 100% monetary benefit, the heirs of the deceased employee are given 75% monetary benefit. Learned advocate for the petitioner has left this question to the Court for deciding the same. In view of the statement of Mr.Rathod and considering the facts and circumstances of the case, the order of the Labour Court so far as it relates to the payment of 100% monetary benefit, i.e. from the date of the removal till the date of reinstatement, is concerned, the same is modified to the extent of 75% and accordingly the heirs of the deceased employee will be entitled to receive 75% monetary benefit. Such amount is to be paid on or before 14/8/2003 without fail. In case as per the Rules, the widow or any family member is entitled to get the compassionate appointment, it will be open for such heir to apply to the Corporation and if such application is made, the Corporation is directed to decide the said

application in accordance with law. Learned advocate for the petitioner may communicate this order to the Corporation, so that, the widow of the deceased employee may not have to wait for a long time for getting the aforesaid monetary benefit.

#. The petition is accordingly partly allowed. Rule is made absolute to the extent indicated above, with no order as to costs.

(P.B.Majmudar,J)